
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-NY-376
Jarad Broadcasting Company of Calverton, Inc.)	
WDRE, formerly WXXP)	NAL/Acct. No. 200432380011
Garden City, New York)	
)	FRN: 0003 5063 18

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 19, 2004

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Jarad Broadcasting Company of Calverton, Inc. (“Jarad”), the licensee of radio station WDRE, has apparently violated Section 73.1350(a) of the Commission’s Rules (the “Rules”),¹ by operating with an excessive antenna height. This section requires that a licensee operate its broadcast station in accordance with the terms of the station authorization. We conclude that Jarad is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On September 26, 2003, the FCC New York Office received a complaint which alleged that Jarad was operating with an excessive antenna height.

3. On October 15, 2003, Commission agents from the New York Office inspected Jarad’s transmitting facilities, located in Manorville, New York. The inspection was conducted with Jarad’s president, John Caracciolo, and chief engineer, Ron Reeve. During the inspection, the agents observed that Jarad’s transmitting antenna was mounted at a height of approximately 132 meters above ground level. The station’s license (File No. BLH-20020520AAF) authorized Jarad to operate with an antenna height of 90 meters.

4. On October 29, 2003, the New York Office issued a Notice of Violation (No. V20043238002) to Jarad for operating with an antenna height in excess of its authorized height, in violation of Section 73.1350(a) of the Rules.

¹ 47 C.F.R. § 73.1350(a).

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5. On November 18, 2003, the New York Office received a reply to the Notice of Violation, in which Jarad acknowledged the violation and stated that they raised the antenna height, without Commission authorization, in response to residents' complaints of interference to consumer electronic equipment in the vicinity of the transmitting tower. The response stated that on October 9, 2003, Jarad requested Special Temporary Authority ("STA") from the FCC's Audio Division to reduce power and increase antenna height, in order to eliminate the interference to nearby homes. The response also stated that on November 3, 2003, the antenna was returned to its authorized height of 90 meters above ground. A review of the Commission's records showed no evidence that the FCC had granted Jarad a STA or any other authorization to operate with an antenna height other than that stated on the station license.

6. On December 4, 2003, the New York office obtained copies of Jarad's Antenna Site Agreement and Tenant Installation Notice for the tower they rent, showing that they installed the antenna at a height of 134 meters above ground level on March 27, 2002.

7. Jarad's call sign was WXXP for facility ID 31754 at the time of complaint and the subsequent FCC inspection conducted on October 15, 2003. A review of the Commission's records showed that Jarad's call sign was changed from WXXP to WDRE on January 12, 2004.

III. DISCUSSION

8. Section 73.1350(a) of the Commission's Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. On October 15, 2003, agents observed that Jarad operated with an antenna height of approximately 132 meters, exceeding its authorized antenna height of 90 meters, in violation of Section 73.1350(a) of the Rules. Information obtained subsequent to the inspection shows that they had operated in violation since antenna installation on March 27, 2002.

9. Based on the evidence before us, we find that Jarad willfully² and repeatedly³ violated Section 73.1350(a) of the Rules by operating with an excessive antenna height, thereby failing to operate its broadcast station in accordance with the terms of the station authorization.

10. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁴ sets the base forfeiture amount for exceeding the authorized antenna height at \$5,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁵ ("Act")

² Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

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which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a five thousand dollar (\$5,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶, and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Jarad is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful and repeated violation of Section 73.1350(a) of the Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Jarad SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380011 and FRN: 0003 5063 18.

14. Any response to this NAL must be mailed to Federal Communications Commission, New York Office, 201 Varick Street, New York, NY 10014, and MUST INCLUDE THE NAL/Acct. No. 200432380011.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes,

⁵47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b)

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Jarad Broadcasting Company of Calverton, Inc., 1103 Stewart Avenue, Garden City, NY 11530.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002